

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

JOSE M. LORIE VELASCO, et al,  
Plaintiffs,

vs.

KMART CORPORATION, et al,  
Defendants,

vs.

GROUP SERVICE SYSTEM,  
COOPERATIVA DE SEGUROS  
MULTIPLES DE PUERTO RICO  
GROUP SERVICE SYSTEM,  
Third Party Defendants.

CIVIL NO.: 1998-1867 (PG)

**MOTION FOR RECONSIDERATION OF OPINION AND ORDER AND REQUESTING  
LEAVE TO FILE OPPOSITION TO MOTION SUMMARY JUDGMENT**

TO THE HONORABLE COURT:

COMES NOW Defendant and Third Party Plaintiff Kmart Corporation ("Kmart"), represented by the undersigned attorney, and respectfully alleges and prays:

1. On May 19, 2004, this Honorable Court entered an Opinion and Order by which it granted Third Party Defendant's Motion for Summary Judgment and ordered the dismissal with prejudice of the Third Party Plaintiff Complaint filed by Kmart Corporation.

2. In reaching its decision, the Court considered that Kmart had untimely filed its response to Group Service System's motion for summary judgment and therefore regarded it as unopposed. The Court noted that on March 31, 2004 in view of the approaching trial date (then set for May 24, 2004) and the two years passed since the filing of the motion (during which the case was stayed due to Kmart's bankruptcy proceedings), the appearing party was granted a term until April 15, 2004 to file its opposition. On April 15, 2004 Kmart

requested an extension of term until April 30, 2004 to file said opposition. Our request was denied also in light of the approaching trial date. On April 30, 2004 Kmart filed a motion for reconsideration and tendered its opposition. The motion to reconsider was subsequently denied. On May 19, 2004 the Court issued its Opinion and Order and considered Group Service System's motion for summary judgment unopposed. Therefore, the grounds for the denial of the request for extension of term to file the opposition to the motion for summary judgment, and the ultimate consideration of Group Service System's motion as unopposed, were primarily predicated on the trial date scheduled for May 24, 2004.

3. However, at this time, the trial date set is continued and the parties are to submit a report by June 22, 2004 as to the proceedings before the Bankruptcy Court. Currently, there is no approaching trial date and Kmart Corporation submits it has valid grounds to oppose Group Service System's motion for summary judgment since "a trialworthy issue looms as to a fact which could potentially affect the outcome of the case". Dyno Nobel v. Amotech Corporation, 63 F. Supp. 2d 140 (1<sup>st</sup> Cir. 1999), citing Serapión v. Martínez, 119 F. 3d 982 (1<sup>st</sup> Cir. 1997) and McCarthy v. Northwest Airlines, Inc., 56 F. 3d 313, 315 (1<sup>st</sup> Cir. 1995). Therefore, it is hereby respectfully requested that this Honorable Court reconsiders its Opinion and Order and grants Kmart Corporation leave to file its opposition to Third Party Defendant's motion for summary judgment.

WHEREFORE, it is respectfully requested from this Honorable Court grants this Motion for Reconsideration and therefore reconsiders its Opinion and Order of May 19, 2004 and grants Kmart Corporation leave to file its Opposition to the Motion for Summary Judgment.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 3<sup>rd</sup> day of June 2004.

IT IS HEREBY CERTIFIED that on June 3, 2004, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: **José Quetglas Jordán, Esq.**, Quetglas Law Office, P.O. Box 16606, San Juan, Puerto Rico, 00907-6606, and to **Vicente Santori Coll, Esq.**, PO Box 363073, San Juan, Puerto Rico 00936.

s/Marta E.Vila Baez  
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